

## **REMARKS**

The aforementioned Office Action rejected claims 1-8 as unpatentable under 35 USC 103(a) over the disclosed prior art in the background of invention section of this application in view of Amundson et al., U.S. Patent Publication No. 2006/0038772. This rejection is traversed. More specifically, this rejection is traversed on the grounds that (a) Amundson is not available as a reference under 35 USC 102(e); and (b) even if Amundson were available under 35 USC 102(e), the use of Amundson in a 35 USC 102(e)/103 rejection such as that made in the Office Action is barred by 35 USC 103(c).

With regard to point (a), it is respectfully noted that the present application was filed on September 3, 2003 and hence is entitled to at least this date for purposes of 35 USC 102(e). Amundson was filed as Application Serial No. 11/162,188 on August 31, 2005. Hence, *prima facie*, Amundson is only entitled to this August 31, 2005 date as its 35 USC 102(e) date; although Amundson does claim benefit of earlier applications, the Office Action makes no attempt to show that it is entitled to any date earlier than its filing date for purposes of 35 USC 102(e). Hence, on the present record, the present application is entitled to an earlier date for purposes of 35 USC 102(e) than is Amundson, and hence Amundson is not available as a reference against the present application under 35 USC 102(e). It is believed to be self-evident that Amundson is not available as a reference against the present application under any other section of 35 USC 102.

As regards point (b), and probably more importantly, even if Amundson were available under 35 USC 102(e), the use of Amundson in a 35 USC 102(e)/103 rejection such as that made in the Office Action is barred by 35 USC 103(c). 35 USC 103(c)(1) provides that subject matter developed by another person which qualifies as prior art only under one or more of subsections (e), (f), and (g) of 35 USC 102 shall not preclude patentability under 35 USC 103 where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. The present application and

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Amundson satisfy the requirements of 35 USC 103(c)(1). As may readily be seen from Office records, Amundson is assigned to E Ink Corporation of 733 Concord Avenue, Cambridge MA by an assignment recorded as Reel 16768, Frame 1. Similarly, the present application is assigned to the same assignee by an assignment recorded as Reel 14060, Frame 518. Furthermore, the undersigned attorney, who is the Intellectual Property Counsel of E Ink Corporation, the assignee of both Amundson and the present application, hereby states, of his own personal knowledge, that at all relevant times the inventors of Amundson and the present application were employed by E Ink Corporation under contracts of employment which required them to assign their inventions to E Ink Corporation, or were subject to other contracts which similarly required assignment of inventions to this corporation.

For the foregoing reasons, Amundson is not available in support of a 35 USC 103 rejection of any of the claims of the present application, and the 35 USC 103 rejection of these claims is unjustified.

Reconsideration and allowance of all claims remaining in this application is respectfully requested.

Since the normal period for responding to the Office Action expired September 22, a Petition for a two month extension of this period is filed herewith.

Respectfully submitted

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